

# STATE OF NEW YORK

7428

2023-2024 Regular Sessions

## IN ASSEMBLY

May 19, 2023

Introduced by M. of A. HUNTER -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to removal and prohibition of directors, trustees, officers, members or partners of certain entities; and to repeal certain provisions of such law related thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 41 of the banking law is REPEALED and a new section  
2 41 is added to read as follows:

3 § 41. Removal and prohibition. 1. Grounds for enforcement action.  
4 Whenever the superintendent has reason to believe that any director,  
5 trustee, officer, member or partner, or, in the case of a foreign bank-  
6 ing corporation, the person in charge, or an officer, of a branch or  
7 agency (for purposes of this section, each a "covered individual"), of  
8 any bank, trust company, limited purpose trust company, private bank,  
9 savings bank, safe deposit company, savings and loan association, credit  
10 union, investment company, bank holding company (as such term is defined  
11 in article three-A of this chapter), foreign banking corporation,  
12 licensed lender, licensed casher of checks, budget planner, mortgage  
13 banker, mortgage loan servicer, mortgage broker, licensed transmitter of  
14 money or student loan servicer (for purposes of this section, each a  
15 "covered entity") has, directly or indirectly: (a) caused, facilitated,  
16 permitted or participated in any violation by a covered entity of a law  
17 or regulation, order issued by the superintendent or any written agree-  
18 ment between such covered entity or covered individual and the super-  
19 intendent; (b) engaged or participated in any unsafe or unsound practice  
20 in connection with any covered entity; or (c) engaged or participated in  
21 any willful material act or omitted to take any material act that  
22 directly contributed to the failure of a covered entity; the superinten-  
23 dent may serve a statement of the charges against such covered individ-  
24 ual, either personally or, upon a finding that such individual cannot be

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 served personally within this state, by registered mail at the last  
2 address of such individual shown on the department's records, and a  
3 notice of an opportunity to appear before the superintendent to show  
4 cause why such covered individual should not be removed from office. A  
5 copy of such notice shall also be sent to any affected covered entity.

6 2. Hearing. If such covered individual waives a hearing, or fails to  
7 appear in person or by a duly authorized representative without good  
8 cause shown at the time and place set for the hearing or, if after a  
9 hearing, the superintendent finds that the covered individual has  
10 engaged in conduct described in subdivision one of this section, the  
11 superintendent may issue an order removing the covered individual from  
12 office and prohibiting the covered individual's employment or the  
13 performance of any contractual agreements with the covered entity. Any  
14 covered individual subject to an order issued pursuant to this subdivi-  
15 sion shall be prohibited from participating, in any manner, in the  
16 conduct of the affairs of any covered entity.

17 3. Suspension pending determination of charges. Upon, or at any time  
18 after service of written notice pursuant to subdivision one of this  
19 section, the superintendent may suspend, pending the determination of  
20 the charges, a covered individual from office or prohibit such individ-  
21 ual from participating in any manner in the conduct of the affairs of  
22 any covered entity for a period of up to one hundred eighty days if the  
23 superintendent has reason to believe that by reason of the conduct  
24 described in subdivision one of this section: (a) a covered entity has  
25 suffered or will probably suffer financial loss; (b) the interests of  
26 the depositors at a covered entity have been or could be prejudiced; or  
27 (c) the covered individual demonstrates willful disregard for the safety  
28 and soundness of a covered entity; the superintendent may extend the  
29 suspension for additional periods of up to one hundred eighty days if  
30 the hearing is not completed within the prior suspension period due to  
31 the request of the covered individual.

32 4. Effect of order for removal or suspension. Such order and the find-  
33 ings of fact upon which it is based shall be effective upon service on  
34 such covered individual personally or, upon a finding that such individ-  
35 ual cannot be served personally within this state, by registered mail,  
36 and may not be made public or disclosed to anyone, except as provided in  
37 subdivision ten of section thirty-six of this article or in connection  
38 with proceedings for a violation of this section. Any covered individual  
39 who thereafter, without permission of the superintendent, participates  
40 in any manner in the management of a covered entity shall be guilty of a  
41 misdemeanor.

42 5. Manner of review. Any order issued pursuant to this section shall  
43 become effective upon service as provided for in subdivision four of  
44 this section and shall remain in effect, unless it is amended or  
45 rescinded by the superintendent or a court of competent jurisdiction, or  
46 replaced by an order issued pursuant to subdivision three of this  
47 section. Such order may be reviewed in the manner provided by article  
48 seventy-eight of the civil practice law and rules.

49 § 2. This act shall take effect immediately.